

APPEAL NO. 041076
FILED JUNE 14, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 11, 2004. The hearing officer decided that: (1) the injury did not occur while the decedent was in a state of intoxication from the introduction of a controlled substance as defined in Section 401.013, therefore, the respondent/cross-appellant (carrier) is not relieved from liability for compensation; and (2) the appellant/cross-respondent (claimant beneficiary) was not a dependent of the decedent and is not entitled to death benefits. The carrier appeals the intoxication determination on sufficiency of the evidence grounds and asserts that the hearing officer failed to shift the burden of proof to the claimant beneficiary on this issue. The claimant beneficiary did not file a response. The claimant beneficiary appeals the determination that she is not a dependent of the decedent, on sufficiency of the evidence grounds. The carrier responded, urging affirmance of that determination.

DECISION

Affirmed.

The claimant beneficiary attached additional documentation to her appeal which would purportedly show that she was a dependent of the decedent. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, it is not shown that the documents could not have been obtained prior to the hearing below. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). Contrary to the carrier's assertion, nothing in our review of the record indicates that the hearing officer failed to shift the burden of proof to the claimant beneficiary on the issue of intoxication. Additionally, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). This is so even though another fact finder might have drawn other inferences from the evidence and reached a different result. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge